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Nuclear Weapons and the Rule of Law

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NUCLEAR WEAPONS AND INTERNATIONAL LAW: A NUCLEAR NONPROLIFERATION REGIME FOR THE 21ST CENTURY

SPEECH

NUCLEAR WEAPONS AND THE RULE OF LAW

*Sergio Duarte**

I wish first of all to thank Ali Shariat, the Symposium Editor of the *Fordham International Law Journal*, for having invited me to speak with you today. As many of you may know, the United Nation's ("U.N.") Office for Disarmament Affairs attaches great importance to disarmament and nonproliferation education,¹ and this makes me all the more grateful to receive this invitation.

I also want to express my appreciation to the Fordham University School of Law and the Nonproliferation, Arms Control, and Disarmament Interest Group of the American Society of International Law for recognizing the importance of the subject of this conference, and the important role of the United Nations in advancing multilateral disarmament efforts.

This subject is both timely and profoundly important to the future of international peace and security. In many respects, this year has the potential to mark a turning point in the history of global efforts to achieve nuclear disarmament. After all, the presidents of the countries with the largest nuclear arsenals, the Russian Federation and the United States, have both jointly and individually voiced their support for the goal of eliminating nuclear weapons.² The two countries are now finalizing a treaty

* High Representative for Disarmament Affairs, United Nations. Speech delivered at the *Fordham International Law Journal* symposium "Nuclear Weapons and International Law: A Nuclear Nonproliferation Regime for the 21st Century" on February 25, 2010.

1. See generally United Nations, UNODA: United Nations Office for Disarmament Affairs, <http://www.un.org/disarmament/> (last visited Mar. 8, 2009).

2. See Remarks in Prague, Czech Republic, 2009 DAILY COMP. PRES. DOC. 00228, at 3 (Apr. 5, 2009) ("[T]oday I state clearly and with conviction America's commitment to seek the peace and security of a world without nuclear weapons."); U.N. GAOR, 64th Sess., 4th plen. mtg., at 17, U.N. Doc. A/64/PV.4 (Sept. 23, 2009) (statements of Russian

to replace the expired Strategic Arms Reduction Treaty (“START”),³ one that will further reduce deployments of strategic nuclear weapons and their delivery vehicles.⁴ Other nuclear-weapon states party to the Nuclear Non-Proliferation Treaty (“NPT”)⁵ have taken various steps to limit their own nuclear weapons capabilities—including such actions as closing down nuclear test sites, halting production of fissile material for use in weapons, and eliminating entire classes of nuclear weapons and delivery vehicles. Overall, declared global nuclear weapon stockpiles have dropped considerably since the height of the Cold War.⁶

Reinforcing these activities by governments is a groundswell of new initiatives from individuals and groups in civil society to achieve a nuclear-weapon-free world. Former senior statesmen now in at least ten countries have authored opinion-editorials voicing their support for nuclear disarmament, following the first of a series of such “op-eds” originally published in the *Wall Street Journal* by George Shultz, William Perry, Henry Kissinger, and Sam Nunn.⁷ Another major initiative, the International Commission on Nuclear Non-Proliferation and Disarmament, jointly organized by Australia and Japan, has just issued a massive study containing a detailed step-by-step proposal for achieving

President Dmitry Medvedev discussing steps to realizing global disarmament); *see also* Joint Statement by President Barack Obama and President Dmitry A. Medvedev of Russia, 2009 DAILY COMP. PRES. DOC. 00208, at 1 (Apr. 1, 2009) (declaring that “[w]e committed our two countries to achieving a nuclear free world” as a result of a meeting in London in anticipation of the G20 Summit).

3. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, U.S.-U.S.S.R., art. XVII(2), July 31, 1991, S. TREATY DOC. NO. 102-20 (1991) (expiring by its own terms fifteen years after its entry into force).

4. *See, e.g.*, Jonathan Weisman, *U.S., Russia Agree to Nuclear-Arms Accord—First Such Pact in Nearly Two Decades Would Cut Number of Warheads, Limit Missiles and Bombers Delivering Them*, WALL ST. J., Feb. 3, 2010, at A9 (reporting on the final stages of negotiations for a new arms control treaty between the United States and Russia).

5. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

6. For current information on global levels of nuclear weapons, see Fed. of Am. Scientists, Status of World Nuclear Forces, <http://www.fas.org/programs/ssp/nukes/nuclearweapons/nukestatus.html>.

7. *See* George P. Shultz et al., Op-Ed., *Toward a Nuclear Free World*, WALL ST. J., Jan. 15, 2008, at A13 (first opinion-editorial in the series).

global nuclear disarmament.⁸ Earlier this month, over 200 international political, military, business, and faith leaders gathered in Paris for the Global Zero Summit to launch the next phase of the Global Zero Campaign focused on the phased elimination of all nuclear weapons.⁹ Countless additional civil society initiatives are underway around the world today, and nuclear disarmament is also a goal that is increasingly cited as a priority by world leaders attending the plenary sessions of the U.N. General Assembly.¹⁰

With all of these activities going on, one is tempted to follow the advice of the great reggae singer Bobby McFerrin, who famously urged, “Don’t worry, be happy.”¹¹

Yet, unfortunately, there are some legitimate grounds for worrying, both about the future of nuclear disarmament and the role of international law in achieving it. First, let us look at some numbers. Here we are in the year 2010—sixty-four years after the U.N. General Assembly first identified the goal of eliminating nuclear weapons;¹² forty-eight years after the Soviet Union and the United States agreed at the U.N. on a joint proposal for “general and complete disarmament” (the McCloy-Zorin joint statement);¹³ forty years after the NPT entered into force, which committed its parties to “pursue negotiations in good faith” on nuclear disarmament;¹⁴ and ten years after the nuclear-weapon

8. See Gareth Evans et al., Int’l Comm’n on Nuclear Non-Proliferation and Disarmament, *Eliminating Nuclear Threats: A Practical Agenda for Global Policymakers* (2009), available at http://www.icnnd.org/reference/reports/ent/pdf/icnnd_report-eliminatingnuclearthreats.pdf.

9. See generally Global Zero, About the Campaign, <http://www.globalzero.org/en/about-campaign> (last visited Mar. 8, 2009).

10. See, e.g., U.N. GAOR, 64th Sess., 8th plen. mtg., U.N. Doc. A/64/PV.8 (Sept. 25, 2009) (containing expressions of support for nuclear disarmament from ten countries in just one assembly meeting).

11. BOBBY MCFERRIN, *Don’t Worry, Be Happy*, on DON’T WORRY, BE HAPPY (EMI 1988).

12. G.A. Res. 1(I), ¶ 5(c), U.N. Doc. A/RES/1(I) (Jan. 24, 1946) (calling for “the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction”).

13. *Report of the Governments of the United States of America and the Union of Soviet Socialist Republics to the Sixteenth Session of the United Nations General Assembly on the Result of Their Exchange of Views on Questions Relating to Disarmament and to the Resumption of Negotiations in an Appropriate Body, Whose Composition Is To Be Agreed Upon* (Joint Statement of Agreed Principles for Disarmament Negotiations), ¶ 3, U.N. Doc. A/4879 (Sept. 20, 1961). This speech is also available in 45 DEP’T ST. BULL. 589–90 (1961).

14. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5, art. VI.

states at the 2000 NPT Review Conference made their “unequivocal undertaking”¹⁵ to accomplish the total elimination of their nuclear arsenals—after all these years, and there are still reportedly over 20,000 nuclear weapons in the world today, with many still on high-alert status.¹⁶ The fact that we do not know the exact number only testifies to another problem—the extremely limited transparency over these arsenals and their associated stocks of fissile materials.

Second, let us consider the problem of the double standard. Critics of the NPT have often termed the treaty “discriminatory” because it establishes a legal distinction between nuclear have and have-not states.¹⁷ Though nuclear disarmament has obviously not been achieved, the nuclear-weapon states have been asking the non-nuclear-weapon states to agree to increased, more intrusive controls over their own peaceful nuclear activities. This certainly contrasts with U.N. General Assembly resolution 2028, which, in 1965, endorsed the negotiation of the NPT, saying that “the treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers.”¹⁸

Furthermore, in 1995, the states parties agreed to extend the NPT indefinitely,¹⁹ as part of a “package deal” that contained several important elements—including efforts to establish a nuclear-weapon-free zone in the Middle East,²⁰ a “programme of

15. See 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 24–May 19, 2000, *Final Document*, ¶ 15(6), U.N. Doc. NPT/CONF.2000/28 (2000).

16. See Fed. of Am. Scientists, *supra* note 6.

17. See, e.g., Nabil Alaraby, *Practical Problems with Multilateral Arms Control Treaties*, in UNITED NATIONS, INTERNATIONAL LAW OF ARMS CONTROL AND DISARMAMENT: PROCEEDINGS OF THE SYMPOSIUM, GENEVA, 28 FEBRUARY–2 MARCH 1991, at 45, 48, U.N. Sales No. GV.91.0.14(H) (1991); KATHLEEN C. BAILEY, STRENGTHENING NUCLEAR NONPROLIFERATION 7 (1993); William Epstein & Paul C. Szasz, *Extension of the Nuclear Nonproliferation Treaty: A Means of Strengthening the Treaty*, 33 VA. J. INT'L L. 735, 761 (1993).

18. G.A. Res. 2028(XX), ¶ 2(b), U.N. Doc. A/RES/2028(XX) (Nov. 19, 1965).

19. See 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 17–May 12, 1995, *Decision 3: Extension of the Treaty on the Non-Proliferation of Nuclear Weapons*, Final Document, Part I: Organization and Work of the Conference, Annex, U.N. Doc. NPT/CONF.1995/32(Part I) (May 11, 1995).

20. See 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 17–May 12, 1995, *Resolution on the Middle*

action” to achieve the “full realization” of article VI of the treaty dealing with disarmament,²¹ and a strengthened review process.²² Yet today, there have been no efforts whatsoever to establish the Middle East zone, large nuclear stockpiles remain, and the treaty review process continues to face difficulties in eliciting hard facts about the status of existing nuclear arsenals. These are just some of the difficult issues that will no doubt be taken up at the 2010 NPT Review Conference which opens next May.

Third, let us consider what is often called “modernization” of the nuclear arsenals. In the face of numerous political and legal commitments to eliminate nuclear weapons, all of the nuclear-weapon states have various programmes to improve, modernize, or refurbish their nuclear arsenals and their associated delivery systems. Experts often refer to this as the phenomenon of “vertical proliferation,” involving the continued qualitative improvement of existing arsenals.²³ Some nuclear-weapon states have tried to reconcile these goals with disarmament by claiming that modernization will allow the retirement of older, less safe weapon systems, or by asserting that a more reliable nuclear arsenal will discourage allies covered by the nuclear umbrella from acquiring their own nuclear weapons.

Fourth, let us consider what is happening with the nuclear deterrence doctrine governing the use of such weapons. While there are some differences among the nuclear-weapon states in the specific circumstances that they have declared would lead to the use of such weapons, the great common denominator of all

East, Final Document, Part I: Organization and Work of the Conference, Annex, U.N. Doc. NPT/CONF.1995/32(Part I) (May 11, 1995).

21. 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 17-May 12, 1995, *Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament*, ¶ 4, Final Document, Part I: Organization and Work of the Conference, Annex, U.N. Doc. NPT/CONF.1995/32(Part I) (May 11, 1995) [hereinafter *1995 Review Conference Decision 2*].

22. See 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 17–May 12, 1995, *Decision 1: Strengthening the Review Process for the Treaty*, Final Document, Part I: Organization and Work of the Conference, Annex, U.N. Doc. NPT/CONF.1995/32(Part I) (May 11, 1995).

23. See, e.g., Epstein & Szasz, *supra* note 17, at 744–45; David A. Koplow, *Parsing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty?*, 1993 WIS. L. REV. 301, 313–14; Richard L. Williamson, Jr., *Law and the H-Bomb: Strengthening the Nonproliferation Regime to Impede Advanced Proliferation*, 28 CORNELL INT'L L.J. 71, 77 (1995).

of these doctrines is the claim that nuclear weapons are both an effective and legitimate means for these states to deter nuclear attacks upon them. Secretary-General Ban Ki-moon has referred to this doctrine as “contagious”²⁴ because of the historical tendency of the deterrence doctrine to proliferate along with their associated weapons.

Fifth, let us consider just some of the formidable challenges facing the “rule of law” today in the field of disarmament. Though opened for signature in 1996, the Comprehensive Nuclear-Test-Ban Treaty (“CTBT”)²⁵ has still not entered into force. And though the 1995 NPT Review and Extension Conference agreed to “the immediate commencement and early conclusion of negotiations” on a fissile material treaty,²⁶ such negotiations have still not taken place despite strong support for such a treaty worldwide. In other areas, the nuclear-weapon states have still not ratified all the protocols to four of the five treaties establishing regional nuclear-weapon-free zones—and none has ratified the protocols to the treaties establishing such zones in Central Asia and Southeast Asia. There are also no multilateral treaties governing missiles or other nuclear weapon delivery systems, and, with the abrogation of the Anti-Ballistic Missile Treaty,²⁷ no international treaties regulating missile defenses.

With respect to nonproliferation, the U.N. Security Council adopted resolution 1540 in 2004, which obliged all states to enact legislation to prevent the proliferation of weapons of mass destruction or their acquisition by non-state actors.²⁸ Yet many states outside the Security Council later voiced their concerns, arguing that the Security Council was never intended to serve as a *de facto* legislature for promulgating binding legal obligations of general applicability to all member states.²⁹ Other

24. The Secretary-General, *The United Nations and Security in a Nuclear-Weapon-Free World*, Address to the East-West Institute, U.N. Doc. SG/SM/11881, DC/3135 (Oct. 24, 2008) [hereinafter *Five-Point Address*].

25. *Comprehensive Nuclear-Test-Ban Treaty*, Sept. 24, 1996, S. TREATY DOC. NO. 105-28 (1997), 35 I.L.M. 1439.

26. *1995 Review Conference Decision 2*, *supra* note 21, ¶ 4(b).

27. *Treaty on the Limitation of Anti-Ballistic Missile Systems*, U.S.-U.S.S.R., May 26, 1972, 23 U.S.T. 3435.

28. *See* S.C. Res. 1540, U.N. Doc. S/RES/1540 (Apr. 28, 2004).

29. *See* Ian Johnstone, *Legislation and Adjudication in the UN Security Council: Bringing Down the Deliberative Deficit*, 102 AM. J. INT'L L. 275, 290–94 (2008) (summarizing the misgivings of Member States over the quasi-legislative nature of resolution 1540); *see also*

nonproliferation concerns have arisen over reports in recent years of actual or possible noncompliance with the NPT or its safeguards agreements by Iraq (before the last war),³⁰ Iran, and Syria.³¹ In 2003, North Korea announced its withdrawal from the NPT, and then conducted nuclear tests in 2006 and 2009.³² Also, many non-nuclear-weapon states have still not concluded their NPT safeguards agreements with the International Atomic Energy Agency.³³

So, yes, there is a lot to be concerned about when it comes to the future of nuclear disarmament. If suspicions persist about the willingness of the nuclear-weapon states to fulfill their disarmament commitments, there will no doubt be ramifications that will take the form of nuclear weapon proliferation, as more and more countries will come to conclude that they too must have this highly valued, ultimate deterrent that will guarantee national survival and protect against nuclear attacks. And as this process unfolds, more and more weapon-usable fissile materials will be produced, stored, and transported around the world, which will only raise the risks of such materials being acquired by non-state actors, and then the world would be facing yet another nuclear nightmare.

I do not wish to be misunderstood here; I am not arguing that the dangers I have just reviewed will in fact transpire. A risk of something occurring is not the same as the occurrence itself, and this brings me to the key message I wish to voice today; namely, the persisting, even growing importance of law in the overall process of achieving global nuclear disarmament. It is almost as important as political will and enlightened leadership

Roberto Lavalle, *A Novel, if Awkward Exercise in International Law-Making: Security Council Resolution 1540*, 51 NETH. INT'L L. REV. 411 (2004) (discussing the legitimacy of resolution 1540 against the backdrop of resolution 1373).

30. See Int'l Inst. for Strategic Studies, *Iraq's Weapons of Mass Destruction: A Net Assessment* (Sep. 9, 2002).

31. See Int'l Atomic Energy Agency [IAEA], *Annual Report 2008*, at 79–80, IAEA Doc. GC(53)/7 (2009) (discussing safeguard implementation in Iran and Syria).

32. See Blaine Harden, *N. Korea Conducts 'Successful' Underground Nuclear Test*, WASH. POST, May 25, 2009, at A16.

33. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5, art. III (binding all states parties to accept a safeguards agreement with the International Atomic Energy Agency). For a brief overview of the International Atomic Energy Agency's safeguard system, see IAEA, *The Safeguards System of the International Atomic Energy Agency* (2007), available at http://www.iaea.org/OurWork/SV/Safeguards/safeg_system.pdf.

among the nuclear-weapon states, which together are indispensable in achieving a world without such weapons. Let me explain.

The world community, through such means as U.N. General Assembly resolutions and NPT Review Conference Final Documents, has over the years identified at least five criteria to use in assessing progress in disarmament. Verification is one of these; it is not sufficient for states simply to declare unilaterally that they do not have nuclear weapons, and this must be confirmed by highly reliable and objective means. Another criterion is irreversibility; confidence in compliance grows if controls are sufficient to make it extremely difficult if not impossible for a state to abandon a disarmament commitment and build or reconstruct a nuclear arsenal. Transparency is also essential in gauging progress in disarmament, for nuclear disarmament will never be achieved if the world does not have hard facts about the size of nuclear arsenals and concrete progress being made in eliminating them. Another criterion is universality; any agreement to achieve global nuclear disarmament must be fully “global” in geographic scope, with no exceptions. Lastly, the world community expects disarmament commitments to be legally binding.

Of these, the last actually also applies to the other criteria, for how can one realistically expect verification or irreversibility to be reliably achieved if they are purely discretionary or optional? Is universality simply to be achieved as a result of a straw poll, or must it be registered in a somewhat more binding form? Similarly, the world should not have to rely upon voluntary declarations by states about their nuclear weapons. This is not the way that nuclear nonproliferation policy is enforced, so why should it be any different for disarmament?

In this sense, law is a vital ingredient in any scheme for achieving a world free of nuclear weapons. If the international community were viewed as on a boat heading to a world without nuclear weapons, political will and politics would constitute its sail, and law its anchor—and both are essential in reaching that destination.

It is precisely because of this indispensability of law that Secretary-General Ban Ki-moon included the goal of negotiating a nuclear weapon convention, or a framework of mutually

reinforcing agreements with the same goal, as the first of his five-part nuclear disarmament proposal, which he announced on October 24, 2008.³⁴ Speaking just days earlier at Harvard University, he reminded his audience, “The United Nations has long stood for the rule of law and disarmament. Yet it also stands for the rule of law in disarmament, which we advance through our various statements, resolutions, and educational efforts.”³⁵

In some respects, the entire ensemble of institutions that comprise the “U.N. disarmament machinery” is involved, in one way or another, in the development or strengthening of multilateral norms for disarmament. The U.N. Disarmament Commission and the General Assembly’s First Committee are deliberative bodies, and although neither the General Assembly’s resolutions nor the Disarmament Commission’s agreed “guidelines” are binding, they do contribute to the overall process of defining and articulating multilateral norms for disarmament.

The Conference on Disarmament in Geneva is the world’s single forum for negotiating multilateral disarmament treaties.³⁶ Last month, Secretary-General Ban Ki-moon called upon the conference, as it opened its current session, to “demonstrate to the world its continuing relevance, especially in strengthening the rule of law in the field of disarmament.”³⁷ His words of encouragement are certainly necessary, given that the conference has been locked in a stalemate for well over a decade due to its inability to reach a consensus that would allow the commencement of negotiations. It has faced such political difficulties before, yet it, and its predecessor bodies, have been involved in the conclusion of all the key multilateral treaties

34. Five-Point Address, *supra* note 24.

35. The Secretary-General, Securing the Common Good in a Time of Crises, Speech at the Harvard University John F. Kennedy School of Government, U.N. Doc. SG/SM/11876 (Oct. 21, 2008).

36. See generally U.N. Office at Geneva, Disarmament: An Introduction to the Conference, [http://www.unog.ch/80256EE600585943/\(httpPages\)/BF18ABFEFE5D344DC1256F3100311CE9](http://www.unog.ch/80256EE600585943/(httpPages)/BF18ABFEFE5D344DC1256F3100311CE9) (last visited Mar. 8, 2010). For a list of participants in the 2010 Conference, see Conference on Disarmament, Geneva, Switz., Jan. 18–Mar. 26, 2010, *List of Participants: 2010 Session*, U.N. Doc. CD/INF.59 (Feb. 11, 2010).

37. The Secretary-General, *Secretary-General Urges Conference to Show Its Continuing Relevance by Strengthening Rule of Law in Disarmament Field*, U.N. Doc. SG/SM/12706, DC/3208 (Jan. 19, 2010).

dealing with weapons of mass destruction (though the NPT itself was negotiated primarily by the Soviet Union and the United States). The conference was able to reach agreement on a substantive program of work last year,³⁸ but was unable to implement it due to differences amongst some of its members over some key issues and priorities. Virtually all members want to proceed immediately with negotiations on a fissile material treaty, but there is still no consensus among its sixty-five members on this. Other items on the conference's agenda for substantive discussions—but not negotiations—are nuclear disarmament, negative security assurances, and the prevention of an arms race in outer space.³⁹

Let me say that I do not believe that the obstacles to negotiations encountered in the Conference on Disarmament are due to any fundamental flaw in the conference as an institution. These obstacles are due rather to differences in the policies of its member states. Some want a treaty to cut off production of fissile material for weapons, while others want such a treaty to include stocks of previously produced material—and at least one member has voiced its concern that, as proposed, the fissile material cut-off treaty would seriously threaten its security. There are persisting differences in priorities as well. Some want negotiations dealing with nuclear disarmament and security assurances, while others want to commence negotiations on a treaty banning the deployment or use of weapons in space.⁴⁰ Progress in these areas will require some changes in state policies.

It is of course true that there can be incremental progress in nuclear disarmament and nonproliferation without the need for new multilateral treaties. States can voluntarily decide on their own—as did Libya and South Africa—to abandon nuclear weapon programs. In 1991, the Russian Federation and the United States undertook a series of unilateral actions that resulted in a substantial reduction in deployments of certain

38. See Conference on Disarmament, Geneva, Switz., Jan. 19–Mar. 27, 2009, *Decision for the Establishment of a Programme of Work for the 2010 Session*, U.N. Doc. CD/1864 (May 29, 2009).

39. See Conference on Disarmament, Geneva, Switz., Jan. 18–Mar. 26, 2010, *Agenda for the 2010 Session*, U.N. Doc. CD/1884 (Jan. 26, 2010).

40. See generally 88 DISARMAMENT DIPLOMACY (2008) (presenting the differing views within the Conference on Disarmament).

types of short-range nuclear weapons.⁴¹ The many difficulties of treaty negotiation and ratification—such as we are now seeing with respect to the CTBT—have prompted some commentators to dismiss the need for treaties in the field of arms control, or have inspired the negotiation of extremely brief agreements, like the Strategic Offensive Reductions Treaty of 2002,⁴² which was about one page in length.

Yet despite the difficulty of negotiating arms-control and disarmament treaties, the world community still recognizes their value, as illustrated by the very fact that the Russian Federation and the United States chose to negotiate a treaty to succeed the START treaty⁴³ and they have also announced they intend to negotiate additional reductions by means of future treaties.⁴⁴

In his famous speech to the General Assembly in September 1961 announcing a detailed U.S. proposal for “general and complete disarmament,” President Kennedy stressed the importance to disarmament of both verification and of international law. He said, “For disarmament without checks is but a shadow, and a community without law is but a shell.”⁴⁵

As for the next logical steps forward in filling in the “shell” of disarmament, I would of course point to the large unfinished agenda of bringing the CTBT into force, negotiating a fissile material treaty, completing ratifications of the Protocols to the regional nuclear weapon-free zone treaties, and starting the

41. See, e.g., U.S. President George Bush, Address to the Nation on Reducing United States and Soviet Nuclear Weapons, 27 WEEKLY COMP. PRES. DOCS. 1348 (Sept. 27, 1991) (announcing the withdrawal of all tactical ground-launched and naval nuclear weapons in hopes of Russian reciprocation). For more information on the unilateral nuclear initiatives of the United States and the Russian Federation in the early 1990s, see Arms Control Association, The Presidential Nuclear Initiatives (PNIs) on Tactical Nuclear Weapons at a Glance, <http://www.armscontrol.org/factsheets/pniglance>.

42. Treaty Between the United States and the Russian Federation on Strategic Offensive Reductions, U.S.-Russ., May 24, 2002, S. TREATY DOC. NO. 107-08 (2002).

43. U.S. President Barack Obama and President of the Russian Federation Dmitry A. Medvedev, Joint Statement Between the United States of America and Russia Regarding Negotiations on Further Reductions in Strategic Offensive Arms, 2009 DAILY COMP. PRES. DOC. 00209, at 1 (Apr. 1, 2009).

44. See Weisman, *supra* note 4 (announcing the prospect of “more-ambitious” arms talks after the conclusion of a new arms reduction treaty between the United States and the Russian Federation).

45. U.N. GAOR, 16th Sess., 1013th plen. mtg., ¶ 42, U.N. Doc. A/PV.1013 (Sept. 25, 1961) (remarks of U.S. President John F. Kennedy). This speech is also available in 45 DEP’T ST. BULL. 619 (1961).

process of developing multilateral legal norms for controlling missiles and outlawing space weapons.

But looking further down the road, I think Secretary-General Ban Ki-moon got it quite right by drawing attention to the need for a nuclear-weapon convention or framework of agreements with a similar objective. Long-term planning should be a near-term priority, not a long-term goal, and I think there is much indeed to be gained just by doing some serious thinking about what exactly would have to be included in such a convention. The mere act of identifying these elements would help in clarifying the work that needs to be done to conclude and implement such a treaty. This is why I believe the “Model Nuclear Weapon Convention”⁴⁶ being circulated by the governments of Malaysia and Costa Rica—which was drafted by nongovernmental experts—is a good step in the right direction. In my opinion, it is never “too early” to start thinking about the architecture and legal obligations that will be needed to achieve global nuclear disarmament—it is far better to do this work early than too late.

So let me conclude not only by thanking you for having invited me, but also by challenging all of you here today to use your skills to contribute in some way to the great cause of nuclear disarmament. You can conduct in-depth research. You can investigate. You can advocate. You can educate others. And you can establish networks for exchanging ideas on how to advance disarmament and the rule of law together. This is my call to action today, for there are few things more rewarding than in contributing to a truly great cause, and nuclear disarmament is one of the greatest.

46. See Model Nuclear Weapons Convention, Letter dated 17 December 2007 from the Permanent Representative of Costa Rica and Malaysia to the United Nations Addressed to the Secretary-General, Annex, U.N. Doc. A/62/650 (Jan. 18, 2008).